

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JILL STEIN, et al.,	:	
	:	
	:	CIVIL ACTION
Plaintiffs,	:	
v.	:	No. 16-cv-6287(PD)
KATHY BOOCKVAR, in her official capacity	:	
as Secretary of the Commonwealth, and	:	
JONATHAN MARKS, in his official capacity	:	
as Commissioner of the Bureau of	:	
Commissions, Elections and Legislation,	:	
Defendants.	:	
	:	
	:	

FACTUAL STIPULATIONS

The parties to the above-captioned action hereby agree and stipulate as to the truth of the following facts for purposes of the evidentiary hearing scheduled for February 18, 2020, on Plaintiffs' motion to enforce the settlement agreement in the above-captioned action:

1. In February 9, 2018, the Pennsylvania Department of State (the "Department") issued a directive (the "February 9, 2018 Directive"), a copy of which is marked as **Exhibit JX 1**.
2. On February 9, 2018, Pennsylvania Governor Tom Wolf issued a press release entitled "Governor Wolf Statement on Directive that New Voting Machines have Paper Record," a copy of which is marked as **Exhibit JX 2**.
3. On March 19, 2018, the Department released a "Pennsylvania Voting System & Electronic Poll Book Report," a copy of which is marked as **Exhibit JX 3**.

4. On April 2, 2018, the Department issued a press release entitled “Pennsylvania Department of State Invites Bids on New Paper Record Voting Systems,” a copy of which is marked as **Exhibit JX 4**.

5. On April 12, 2018, Jonathan Marks, on behalf of the Department, sent an email to county election directors attaching a press release dated April 12, 2018 (the “April 12, 2018 Press Release”). A copy of this email and its attachment is marked as **Exhibit JX 5**.

6. On April 17, 2018, the Department released a “Pennsylvania Voting System & Electronic Poll Book Report,” a copy of which is marked as **Exhibit JX 6**.

7. Since January 1, 2018, the Department has certified eight voting systems.

8. On June 12, 2018, the Department issued a “Directive Concerning the Conduct of Electronic Voting System Examinations by the Commonwealth of Pennsylvania Issued by the Secretary of the Commonwealth” (the “June 12, 2018 Directive”), a copy of which is marked as **Exhibit JX 7**.

9. On July 2, 2018, the United States Election Assistance Commission (the “EAC”) certified that the ES&S EVS 6.0.0.0 voting system had been tested against, and conformed to, the Voluntary Voting System Guidelines Version 1.0 (VVSG 1.0). A copy of the EAC’s Certificate of Conformance for the EVS 6.0.0.0 is marked as **Exhibit JX 8**.

10. On July 6, 2018, the Department released a “Pennsylvania Voting System & Electronic Poll Book Report,” a copy of which is marked as **Exhibit JX 9**.

11. On September 17, 2018, the Court filed a Notice scheduling a settlement conference in this action for October 11, 2018, at 1:30 P.M., before the Honorable Timothy R. Rice. A copy of this Notice is marked as **Exhibit JX 10**.

12. On September 19, 2018, at approximately 8:37 a.m., Plaintiffs' counsel sent Defendants' counsel an email, a copy of which is marked as **Exhibit JX 11**.

13. On September 21, 2018, the Department released a "Pennsylvania Voting System & Electronic Poll Book Report" (the "September 21, 2018 Voting System Report"), a copy of which is marked as **Exhibit JX 12**.

14. The Department held an examination of the EVS 6.0.2.1 on September 25 through 28, 2018.

15. On September 25, 2018, Deputy Secretary Jonathan Marks, then the Commissioner of the Department's Bureau of Commissioners, Elections and Legislation, testified at a public Pennsylvania Senate Committee hearing. A copy of his written testimony ("Marks' September 25, 2018 Testimony") is marked as **Exhibit JX 13**.

16. On September 28, 2018, Defendants' counsel sent Plaintiffs' counsel an email (the "September 28, 2018 Email"), a copy of which, without its exhibits, is marked as **Exhibit JX 14**.

17. A copy of the September 21, 2018 Voting System Report was marked to the September 28, 2018 Email.

18. A copy of the February 9, 2018 Directive was attached to the September 28, 2018 Email.

19. A copy of the April 12, 2018 Press Release was attached to the September 28, 2018 Email.

20. A copy of the June 12, 2018 Directive was attached to the September 28, 2018 Email.

21. A copy of Marks' September 25, 2018 Testimony was attached to the September 28, 2018 Email.

22. On October 1, 2018, Plaintiffs' counsel sent Defendants' counsel an email attaching a link to an Order that was entered on September 17, 2018 in *Curling v. Kemp*, No. 17-2928 (N.D. Ga.) (the "September 17, 2018 *Curling* Order"). A copy of the email is marked as **Exhibit JX 15**. A copy of the September 17, 2018 *Curling* Order is marked as **Exhibit JX 16**.

23. On October 1, 2018, Defendants' counsel sent Plaintiffs' counsel an email (the "October 1, 2018 Email") attaching a copy of the cooperating purchase agreement that the Department set up to provide counties a means of purchasing new voting systems and electronic poll books (the "COSTARS Document"). A copy of the October 1, 2018 Email is marked as **Exhibit JX 17**. A copy of the COSTARS Document is marked as **Exhibit JX 18**.

24. On October 5, 2018, Defendants' counsel sent Plaintiffs' counsel and others a calendar invitation scheduling a telephone conference for October 9, 2018, a copy of which is marked as **Exhibit JX 19**.

25. On October 9, 2018, Plaintiffs' counsel sent Defendants' counsel an email (the "October 9, 2018 Email") responding to the September 28, 2018 Email. A copy of the October 9, 2018 Email is marked as **Exhibit JX 20**. As part of the October 9, 2018 Email, Plaintiffs' counsel included comments written by J. Alex Halderman, an expert retained by Plaintiffs in connection with the above-captioned litigation.

26. The comments by Dr. Halderman in the October 9, 2018 Email included a link to a blog post at the "Freedom to Tinker" website by Andrew Appeal dated September 14, 2018, and entitled "Serious design flaw in ESS ExpressVote touchscreen: 'permission to cheat.'" The url for this blog post (the "September 14, 2018 Appel Post") is <https://freedom-to-tinker.com/2018/09/14/serious-design-flaw-in-ess-expressvote-touchscreen-permission-to-cheat/>

tinker.com/2018/09/14/serious-design-flaw-in-ess-expressvote-touchscreen-permission-to-cheat/. A copy of the September 14, 2018 Appel Post is marked as **Exhibit JX 21**.

27. The September 14, 2018 Appel Post contains a link to a video, the url for which is <https://www.youtube.com/watch?v=yVEEHDTtuxI&feature=youtu.be>. A copy of this video is marked as **Exhibit JX 22**.

28. Defendants' counsel did not respond in writing to Plaintiffs' counsel's October 9, 2018 email. Defendants' counsel spoke with Plaintiffs' counsel later on October 9, 2018, after receiving the October 9, 2018 email.

29. Plaintiffs and Defendants engaged in a settlement conference in this case on October 11, 2018.

30. Magistrate Judge Rice presided over the settlement conference and mediated discussions between the parties.

31. In advance of the settlement conference, on September 26, 2018, Plaintiffs' counsel transmitted an *ex parte* settlement conference summary to Magistrate Judge Rice's chambers. A copy of the transmittal email and conference summary are marked as **Exhibit JX 23**. Before Plaintiffs filed their motion to enforce the settlement agreement, neither Defendants nor Intervenors had ever seen or been provided with a copy of Plaintiffs' settlement conference summary, nor had they ever been told what it contained.

32. Plaintiffs came to the settlement conference with a draft proposed term sheet, a copy of which is marked as **Exhibit JX 24**.

33. On October 12, 2018, Plaintiffs' counsel sent Defendants' counsel an email attaching a proposed "Term Sheet for Settlement Between Plaintiffs and Defendants." A copy of this email and its attachment is marked as **Exhibit JX 25**.

34. On October 15, 2018, Plaintiffs' counsel transmitted to Magistrate Judge Rice's chambers an agreed-upon, unsigned term sheet, copying Defendants' counsel. A copy of this email and its attachment is marked as **Exhibit JX 26**.

35. On November 9, 2018, the parties signed the term sheet that had been transmitted to Magistrate Judge Rice's chambers on October 15, 2018. A copy of the fully executed term sheet is marked as **Exhibit JX 27**.

36. On November 12, 2018, the EAC certified that the EVS 6.0.2.1 had been tested against, and conformed to, the VVSG 1.0. A copy of the EAC's Certificate of Conformance for the EVS 6.0.2.1 is marked as **Exhibit JX 28**.

37. On November 21, 2018, Defendants transmitted to Plaintiffs a proposed draft settlement agreement. Defendants' transmittal email and draft are marked as **Exhibit JX 29**.

38. On November 28, 2018, Plaintiffs and Defendants entered into a Settlement Agreement and Release resolving Plaintiffs' then-pending claims against Defendants in the above-captioned litigation (the "Settlement Agreement"). A copy of the Settlement Agreement is marked as **Exhibit JX 30**.

39. On November 28, 2018, Jill Stein, or someone acting on her behalf, sent an email, a copy of which is marked as **Exhibit JX 31**.

40. Marked as **Exhibit JX 32** is a copy of a tweet that Jill Stein posted on November 28, 2018, at approximately 5:35 p.m.

41. In November and December 2018, Dave Schwab was the communications director for the Stein recount-related efforts.

42. On November 29, 2018, Plaintiffs' counsel posted a statement entitled "Historic Settlement in Pennsylvania" on the website of Emery Celli Brinckerhoff & Abady LLP. The url

for this statement is <https://www.ecbalaw.com/historic-settlement-in-pennsylvania/>. A copy of this statement is marked as **Exhibit JX 33**.

43. On November 30, 2018, the Department issued a report (the “Certification Report”) certifying the EVS 6.0.2.1 system, including the ExpressVote XL, for use in Pennsylvania. A copy of the Certification Report is marked as **Exhibit JX 34**.

44. Defendants posted the Certification Report on the Department’s website, where it was accessible to the public, and noted that the EVS 6.0.2.1 system had been certified on subsequent versions of the Pennsylvania Voting System & Electronic Poll Book Report, which were also posted on the Department’s website and accessible to the public. Defendants did not communicate the certification of the EVS 6.0.2.1 system to Plaintiffs.

45. On November 30, 2018, the City of Philadelphia publicly posted a Request for Proposals (“RFP”) for a new voting system, with proposals due by December 28, 2018.

46. On December 13, 2018, Montgomery County, Pennsylvania, awarded a contract for new voting systems to Dominion Voting Systems, Inc. (“Dominion”).

47. Marked as **Exhibit JX 35** is a copy of a tweet that Jill Stein posted on January 3, 2019, at approximately 2:19 p.m.

48. On behalf of Plaintiffs, Halderman attended Pennsylvania’s functional examination of the Hart Verity 2.3.3 Voting System, which commenced on January 22, 2019.

49. On January 29, 2019, Halderman sent an email to attorneys within the Department, a copy of which is marked as **Exhibit JX 36**.

50. On February 20, 2019, Philadelphia’s City Commissioners voted to purchase the ExpressVote XL.

51. On February 20, 2019, the Philadelphia Commissioners Office issued a press release regarding Philadelphia's decision to purchase the ExpressVote XL. A copy of this press release is marked as **Exhibit JX 37**.

52. On February 21, 2019, Dr. Halderman sent an email to attorneys within the Department. Dr. Halderman's email is contained within an email chain, a copy of which is marked as **Exhibit JX 38**.

53. On February 26, 2019, Dr. Halderman sent an email to attorneys within the Department. Dr. Halderman's email is contained within an email chain, a copy of which is marked as **Exhibit JX 38**.

54. On March 6, 2019, Northampton County Elections Commission recommended the purchase of the ExpressVote XL.

55. On March 7, 2019, Dr. Halderman sent an email to attorneys within the Department. Dr. Halderman's email is contained within an email chain, a copy of which is marked as **Exhibit JX 38**.

56. On March 26, 2019, Secretary Kathy Boockvar, then Acting Secretary of the Commonwealth, testified at a public Pennsylvania Senate Committee hearing. A copy of her testimony is marked as **Exhibit JX 39**.

57. On March 28, 2019, Dr. Halderman sent an email to attorneys within the Department. Dr. Halderman's email is contained within an email chain, a copy of which is marked as **Exhibit JX 38**.

58. On April 17, 2019, Dr. Halderman sent an email to attorneys within the Department. Dr. Halderman's email is contained within an email chain, a copy of which is marked as **Exhibit JX 38**.

59. On May 9, 2019, Plaintiffs' counsel sent an email to Defendants' counsel.

Plaintiffs' counsel's email is contained within an email chain, a copy of which is marked as

Exhibit JX 40.

60. The City of Philadelphia finalized and signed a contract with ES&S for the purchase of the ExpressVote XL on May 13, 2019.

61. On May 14, 2019, Plaintiffs' counsel sent an email to Defendants' counsel.

Plaintiffs' counsel's email is contained within an email chain, a copy of which is marked as

Exhibit JX 40.

62. On May 16, 2019, the Department provided videos of testing of Dominion systems.

63. On May 16, 2019, the Northampton County Council approved and finalized Northampton County's purchase of the ExpressVote XL.

64. The 2019 Primary Election was held in Pennsylvania on May 21, 2019.

65. May 21, 2019, was 159 days after December 13, 2018.

66. Montgomery County voters used new Dominion voting systems in the 2019 Primary Election.

67. On May 28, 2019, Dr. Halderman sent an email to Defendants' counsel. Dr. Halderman's email is contained within an email chain, a copy of which is marked as **Exhibit JX 41.**

68. On June 4, 2019, Dr. Halderman sent an email to Defendants' counsel. Dr. Halderman's email is contained within an email chain, a copy of which is marked as **Exhibit JX 41.**

69. On June 5, 2019, the Department for the first time provided Dr. Halderman with videos of testing of ES&S systems.

70. On June 26, 2019, Cumberland County’s Board of Elections voted to purchase the ExpressVote XL.

71. On July 16, 2019, the Department received a Petition to Reexamine the ExpressVote XL (the “Reexamination Petition”). A copy of the Reexamination Petition is marked as **Exhibit JX 42**.

72. Plaintiffs first notified the Department of their position that the Secretary’s certification of the ExpressVote XL had failed to comply with the Settlement Agreement on July 29, 2019, in a letter Plaintiffs’ counsel sent Defendants’ counsel (the “July 29, 2019 Letter”). A copy of the July 29, 2019 Letter is marked as **Exhibit JX 43**.

73. On August 9, 2019, Defendants’ counsel asked Plaintiffs’ counsel for an extension of time, until September 12, 2019, to respond to the July 29, 2019 Letter. A copy of this request is marked as **Exhibit JX 44**. Plaintiffs’ counsel agreed to the requested extension.

74. On August 27, 2019, Plaintiffs’ counsel and counsel for the Department spoke by telephone.

75. On September 3, 2019, the Department issued a Reexamination Report for the ExpressVote XL, a copy of which is marked as **Exhibit JX 45**.

76. On September 10, 2019, Plaintiffs’ counsel sent Defendants an email. A copy of the September 10 email and Defendants’ response is contained in an email chain, a copy of which is marked as **Exhibit JX 46**.

77. On September 12, 2019, Defendants' counsel sent Plaintiffs' counsel a letter (the "September 12, 2019 Letter") responding to the July 29, 2019 Letter. A copy of the September 12, 2019 Letter is marked as **Exhibit JX 47**.

78. On October 1, 2019, Plaintiffs' counsel sent Defendants' counsel a letter (the "October 1, 2019 Letter"). A copy of the October 1, 2019 Letter is marked as **Exhibit JX 48**.

79. On October 30, 2019, Defendants' counsel sent Plaintiffs' counsel a letter (the "October 30, 2019 Letter") responding to the October 1, 2019 Letter. A copy of the October 30, 2019 Letter is marked as **Exhibit JX 49**.

80. On November 6, 2019, Plaintiffs' counsel and counsel for the Department spoke by telephone.

81. On November 10, 2019, Plaintiffs' counsel sent Defendants' counsel an email (the "November 10, 2019 Email"). A copy of the November 10, 2019 Email appears in the email chain marked as **Exhibit JX 50**.

82. On November 13, 2019, Defendants' counsel sent Plaintiffs' counsel an email (the "November 13, 2019 Email") responding to the November 10, 2019 Email. A copy of the November 13, 2019 Email appears in the email chain marked as **Exhibit JX 50**.

83. On November 26, 2019, Plaintiffs filed their Motion to Enforce the Settlement Agreement [ECF 112].

84. There are currently 831 polling locations for the 1,703 distinct election divisions in Philadelphia.

85. The 2019 General Election took place on November 5, 2019.

86. November 5, 2019 was 176 days after May 13, 2019.

87. November 5, 2019 was 173 days after May 16, 2019.

88. Voters in Northampton County and Philadelphia who voted at polling places in the 2019 General Election used the ExpressVote XL to vote.

89. During the 2019 General Election, 304,553 votes were cast in Philadelphia.

90. The Philadelphia County Board of Elections processed 342,587 voter registration applications for the 2016 General Election.

91. The Philadelphia County Board of Elections processed 180,713 voter registration applications for the 2018 General Election.

92. The Philadelphia County Board of Elections processed 110,470 voter registration applications for the 2019 General Election.

93. The Philadelphia County Board of Elections will conduct a Special Election for the 190th Legislative District on February 25, 2020.

94. The 2020 Pennsylvania Primary Election will be held on April 28, 2020.

95. The last day to register to vote for the 2020 General Election is October 19, 2020.

96. The 2020 General Election will be held on November 3, 2020.

97. The 2020 General Election will take place 259 days from the date of the evidentiary hearing on Plaintiffs' motion.

98. Marked as **Exhibit JX 51** is an example of a hand-marked paper document used with a Clear Ballot voting system.

99. Marked as **Exhibit JX 52** is an example of a paper document used with a ClearBallot voting system.

100. Marked as **Exhibit JX 53** is an example of a hand-marked paper document used with a Dominion voting system.

101. Marked as **Exhibit JX 54** is an example of a paper document used with a Dominion voting system.

102. Marked as **Exhibit JX 55** is an example of a hand-marked paper document used with an ES&S voting system.

103. Marked as **Exhibit JX 56** is an example of a paper document used with the ExpressVote 2.1.

104. Marked as **Exhibit JX 57** is an example of a paper document used with the ExpressVote XL.

105. Marked as **Exhibit JX 58** is an example of a hand-marked paper document used with a Hart voting system.

106. Marked as **Exhibit JX 59** is an example of a paper document used with a Hart voting system.

107. Marked as **Exhibit JX 60** is an example of a paper document used with a Hart voting system.

108. Marked as **Exhibit JX 61** is an example of a hand-marked paper document used with a Unisyn voting system.

109. Marked as **Exhibit JX 62** is an example of a paper document used with a Unisyn voting system.

110. Marked as **Exhibit JX 63** is an example of a paper document used with a Unisyn voting system.

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CERTIFICATE OF SERVICE

I hereby certify that on February 11, 2020, I caused the foregoing Factual Stipulations to be filed with the United States District Court for the Eastern District of Pennsylvania via the Court's CM/ECF system, which will provide electronic notice to all counsel of record.

/s/ Mark Aronchick

Mark Aronchick